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ABSTRACT

A June 21, 1973, Supreme Court ruling yielded jurisdiction in matters of obscenity to individual communities and the decision as to what is prurient to "contemporary community standards." This ruling leaves the courts in the powerful position of surgeon, judge, film critic, and arbiter of community taste. An analysis of past court cases involving obscenity in the arts (i.e., "The Scarlet Letter," "Ulysses," etc.) illustrates the problems and dangers of such trials which have resulted in mass book burnings and seizures. The language of the ruling is inexcusably vague: what are the criteria for determining the meanings of words such as "community" and "prurient?" In addition, since all of the decisions rendered by the Supreme Court on obscenity have been arrived at by males, these decisions wrongly assume that what is of prurient interest to men can be applied to women. There are clear indications that an assault on intellectual freedom will accompany the search for the obscene. (TS)

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HESTER PRYNNE AND LINDA LOVELACE: PURE OR PRURIENT

The June 21, 1973 Supreme Court decisions on obscenity placed the two heroines, Hester Prynne and Linda Lovelace in equal jeopardy. In both cases, the decision as to who is pure or prurient rests in the hands of "contemporary community standards." There are communities where the vehicles in which the two superstars are featured have been declared obscene. In a survey of censorship in Arizona schools during the years 1966 to 1968, two complaints were recorded against The Scarlet Letter. In both cases, the book was judged "filthy." The school principal in one case asked the English teachers in his school to refrain from using it since the book arouses controversy and in the other case, the book was retained. [1] As for the film Deep Throat in which Linda Lovelace plays the role of a woman unable to achieve sexual pleasure through the normal course of anatomical events, and of her search for fulfillment. In a ruling handed down by the Criminal Court of the City of New York, Judge Joel J. Tyler in the People of the State of New York Against Mature Enterprises banned the film from public viewing. Judge Tyler, describing the explicit scenes involving many and varied forms of sexual activity concluded with these words, "Justice Jackson says he knows hard core pornography when he merely sees it (Jacobellis v. Ohio, supra, p. 197). We have seen it in Deep Throat and this is one throat that deserves to be cut. I readily perform this operation in finding the defendant guilty as charged..." In this act, Judge Tyler, in order to preserve public morals is surgeon, judge, film critic, and arbiter of community taste.

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[1] Ken Donelson, "Censorship and Arizona Schools: 1966-1968," Arizona English Bulletin, Feb. 1969, Vol. II, No. 2.

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When the Supreme Court used the word "contemporary" in describing community standards, it recognized that the passage of time is a significant factor in the determination of obscenity. The sins of Hester Prynne have passed into respectability as well as obscurity but Ms. Lovelace's transgressions are at the present moment in history, unforgiveable.

In 1933, The United States Customs Authorities sought to exclude James Joyce's Ulysses from importation because of pornographic content and the use of four letter words. In order to make a test case of the book which was being smuggled openly into the country, Bennett Cerf of Random House arranged for the book to be seized by the port authorities. Morris L. Ernst, Counsel for Random House argued the case. He said:

> Judge, as to the word "fuck" one etymological dictionary gives its derivation as from facere to make- The farmer fucked the seed into the soil. This, your honor, has more integrity than a euphemism used every day in every modern novel to describe precisely the same event.

The case was decided by Judge Woolsey who rendered the decision in an eloquent example of fine literary criticism.

> In writing Ulysses Joyce sought to make a serious experiment in a new, if not wholly novel, literary genre. He takes persons of the lower middle class living in Dublin in 1904 and seeks, not only to describe what they did on a certain day early in June of that year as they went about the city bent on their usual occupations, but also to tell what many of them thought about the while.
>
> Joyce had attempted- it seems to me, with astonishing success- to show how the screen of consciousness with its ever-shifting kaleidoscopic impressions carries, as it were on a plastic palimpsest, not only what is in the focus of each man's observation of the actual things about him, but also in a penembral zone residual of past impressions, some recent and some drawn up by association from the domain of the subconscious. He shows how each of these impressions affects the life

and behavior of the character which he is describing.

> What he seeks to get is not unlike the result of a double or, if that is possible, a multiple exposure on a cinema film, which would give a clear foreground with a background visible but somewhat blurred and out of focus in varying degrees.

Judge Woolsey declared that Ulysses could be admitted into the United States because reading the book in its entirety "did not tend to excite sexual impulses or lustful thoughts, but that its net effect on them was only that of a somewhat tragic and very powerful commentary on the inner lives of men and women." (United States v. One Book Called Ulysses D.C. S.D. N.Y. Dec. 6, 1933).

Since the courts act for the public good, it is well to see if the public has been served by legal actions against obscenity. Judge Tyler in March of 1973 removed "Deep Throat" from circulation in order to prevent impinging on the privacy of any adult willing or unwilling to pay the $5.00 admission price. Has the banning of the film deprived any consenting adult with such cultural proclivities from finding an object for his or her fancy? According to a survey conducted by the New York Times in October of 1973, four months after the Supreme Court ruling in June, it was still possible to see blue movies and purchase graphically explicit books in all major cities including Washington D.C. where there were six theatres showing hard core films.

However, while the Supreme Court decision has not diminished the production of pornography, it has influenced reputable book publishers, movie makers, librarians, and teachers in schools and universities.

The burning of novels and short story anthologies by a North Dakota School Board was reported in November 1973. (New York Times, Nov. 11, 1973) When a sophmore student complained about the language in Kurt Vonnegut, Jr.'s novel Slaughterhouse Five, the five member school board of Drake, North Dakota met and agreed that the book was profane. They ordered all 32 copies to be burned.Other books scheduled to be withdrawn or burned were Deliverance by James Dickey and Short Story Masterpieces, an anthology which included short stories by Ernest Hemingway, William Faulkner and John Steinbeck. An English teacher at the school said in defense of the books, and the four letter words used in them, "All I can say is the author is trying to tell his story like it is using language as it is being used today out there in the real world." None of the school board members had read the books that they had ordered destroyed in their entirety.

Was the North Dakota school board acting under the mandate given it by the June 21, 1973 Supreme Court decision which places the determination of what is or is not obscene in the hands of the "community." If contemporary community standards appear to be the criteria for such a determination, does "community" mean state, city, neighborhood, or local school board? The courts have made no decision on this matter and the effect has been a struggle between vocal groups concerned with pornography and its alleged ability to provoke anti-social acts and teachers, librarians, bookmen, and movie makers with guarantees of the First Amendment of free speech and free expression.

This was the struggle in School District #25 in Queens, New York when the local School Board banned the book Down These Mean Streets by Piri Thomas. Those members of the school board who voted for removing the book from the library shelves, and it was not a unanimous vote, objected to the language and depiction of deviant sexual behavior.

District 25's Local School Board believes, as do all anti-obscenity groups in the country, in a casual relationship between exposure to pornography and the onset of anti-social acts. There is a clear unwillingness of the Supreme Court to confront this behavioral connection. The courts contend that, in the absence of clear proof, States have the right to assume that there is a casual connection between crimes of a sexual nature and exposure to pornography.

In 1967, President Nixon and the 90th Congress authorized a commission on Obscenity and Pornography and empowered it to study the effect of pornography upon the public and its relationship to crime and to recommend legislative action. The findings of the Task Force took three years and when published were publicly rejected by the President and many members of Congress. Senator Eastland of Mississippi funded and authorized a Subcommittee to investigate the sources of information used by the Task Force. What were the conclusions that the President's Task Force published that were rejected? Among the forms of obscenity, the Task Force cited advertising to which all citizens were captive audiences. "...even more serious than the overt sexuality in advertising is its ability to exploit the psychology of subliminal perception." To those who view airline and stocking advertisements, the recognition by the Task Force thata message on television need not be overly pornographic to carry the erotic message to the viewers, appears accurate. In addition, the Task Force rejected a punitive and narrow approach to the elimination of obscenity. The report reads, "consumption of obscenity is really a symptom of social ills that have become endemic in our society." Ills such as unemployment, welfare, and poor housing are mentioned. The 90th Congress was not exuberant at hearing that the problem of pornography was tied to programs supporting job training, a

welfare program that does not contribute to social disorganization, and a greater committment to a federal housing program. Those who desired a less complex "law and order" approach were greeted with a sociological explanation which they promptly rejected.

However, the Task Force did support the establishment of local juries to assess each allegedly obscene book, film or play. The idea is attributed to Senator Everett Dirksen and highly recommended by the Task Force.

While communities may be granted jurisdiction in obscenity rulings, they are given by the Courts a test to be applied which has proven capricious and incapable of application. Such a test is the test of pruriency. Does the average person, applying contemporary community standards find that the interest in the material as a whole is prurient? Matter appealing to prurient interest arouses sexual desire or impure thoughts. Judge Brennan in Roth v. United States cites a dictionary definition of prurience as itching, longing, uneasy with desire. The result of such an elastic definition is that not only is "The Scarlet Letter" and "Deep Throat" open to such responses but it has been pointed out that there are individuals that can be aroused by turning the pages of a profusely illustrated seed catalogue.

Because of the lack of clarity in the legal definition of obscenity, the Supreme Court has spent a considerable amount of time viewing allegedly pornographic films and reading allegedly hard core books. The Court has wondered whether their frequent deliberations in this area have been fruitful. The public may wonder whether they are served by having nine robed male judges retire for a private viewing of a film and then emerge with a decision. The Court has never revealed whether they wait for Judge Brennan's itch to come upon them as a sign that a prurient interest is present. Does the age of the viewer determine susceptibility to such visceral reactions? Certainly the sex

of the viewer will alter the reaction. Since all of the decisions rendered by the Supreme Court on obscenity have been arrived at by males, it is possible to question whether one half of the contemporary community standard- the female half- has been fairly represented. In the June 21, 1973 decision, Judge Burger says, "Woman is degraded." Since no woman has ever participated in a decision involving the higher court judgments on obscenity, such a statement can be viewed as paternalistic. The Court has never posed the question of prurience by applying the test to women as well as men. The fact is that whatever decisions have been made by the Supreme Court were made on the assumption that what is of prurient intereest to men can be applied to women.

To summarize, the Supreme Court in its June 21, 1973 ruling yields jurisdiction in matters of obscenity to communities. Communities will now have to make decisions on questions of morality in sexual behavior, standards of what is art and what is pornography, and judgments about the relationship of books and films to behavior.

There are clear indications throughout the country that an assault on intellectual freedom will accompany the search for the obscene.